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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205924
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTER ENERGY COMPANY,)	
)	
)	Opposition No.: 91205924
)	
Opposer,)	
)	
v.)	Serial No.: 85/508374
)	
CHIH, LI-WEI,)	
)	
Applicant.)	
)	Mark: 

APPLICANT’S RESPONSE TO OPPOSER’S MOTION TO COMPEL

Applicant Li-Wei Chih submits this Response to the motion of Opposer, Monster Energy Company. Opposer’s motion to compel seeks documents that have already been produced or that do not exist in an apparent effort to further delay these proceedings. Furthermore, Opposer’s motion is improper under TBMP § 523 and 37 CFR § 2.120(e), which require Opponent to submit its motion in good faith, and only after efforts to resolve the dispute among the parties have proven unsuccessful. In this case, Opponent failed to notify Applicant that there was an ongoing discovery dispute or allow Applicant an opportunity to discuss Opposer’s continuing concerns. Instead, after Applicant met and conferred with Opposer, provided fully compliant supplemental responses, and believed the dispute to be amicably resolved, Opposer surprisingly and surreptitiously filed its motion to compel. For these reasons, discussed in detail below, Opposer’s motion to compel should be summarily denied.

ARGUMENT

Opposer bases its motion to compel on three specific claims. Namely, Opposer alleges that Applicant: (1) has withheld documents and communications responsive to Opposer's Requests for the Production of Documents and Things Nos. 9, 20, 39, 51, and 56; (2) failed to conduct a reasonably thorough search to identify additional documents responsive to Opposer's Document Request Nos. 1-70; and (3) failed to provide complete responses to Opposer's Interrogatories Nos. 16, 20, and 25. All three of these allegations are patently false, as detailed below.

I. APPLICANT HAS PRODUCED ALL RESPONSIVE DOCUMENTS AND COMMUNICATIONS IN HIS POSSESSION

Opposer alleges in its motion that Applicant has "withheld" documents and communications responsive to Opposer's discovery requests. Applicant has reassured Opposer multiple times, and under oath, that this is not the case.

For instance, on page 16 of Applicant's Supplemental Discovery Responses, attached as Exhibit A, Applicant testified:

"Applicant confirms after a complete and thorough search that he has produced all documents responsive to each request....Applicant further confirms that he is not withholding any documents responsive to any request, and that he has completed his document production for each request." (Emphasis added).

Applicant also made this assertion in his original discovery responses, in e-mail correspondence between the parties, *and* during the parties' meet and confer on May 24, 2013. Opposer's claim that Applicant is withholding documents or communications is baseless and directly contrary to numerous plain statements by Applicant.

Regarding Opposer's specific accusations that Applicant is secreting documents responsive to Opposer's Requests for the Production of Documents and Things Nos. 9, 20, 39, 51, and 56, Applicant reiterates that he is not withholding any documents or communications. To the extent that Applicant has not produced documents, he does not have them. All documents that he does possess were duly produced as part of the 300+ pages of exhibits that he submitted to Opponent during the discovery phase of this opposition.

With regard to information that Applicant did not produce because that information was publicly and readily available from sources that were more convenient and less burdensome, Applicant is within his rights not to produce such documents pursuant to Federal Rule of Civil Procedure 26. These documents include Applicant's public websites and the thousands of comments on his public Facebook page. These documents are easily accessible to Opposer at any time, and are available online in a much more convenient and readable format than they would be if Applicant cut and pasted web content into a Word document. Applicant could admittedly print screen shots of these public sites. However, printing and scanning such a large number of pages for Opposer, who could effortlessly access those exact pages online, would have been unduly burdensome to Applicant, whose counsel is part of a pro bono law school clinic and does not have the administrative staff or equipment to comply with such a needless and harassing request.

The fact that Opposer has been unable to locate any scrap of evidence or information indicating that there has ever been actual or even possible confusion between its mark and Applicant's does not mean that such evidence exists and is being withheld. It simply does not exist, because the confusion itself does not, and will never, exist. Even if Opposer's motion to compel were to succeed, there is nothing to be compelled.

II. APPLICANT HAS CONDUCTED SEVERAL GOOD FAITH, THOROUGH SEARCHES TO IDENTIFY ALL RESPONSIVE DOCUMENTS

Opposer accuses Applicant in its motion to compel of failing to conduct a reasonably thorough search to identify responsive documents. Applicant has performed multiple comprehensive searches of his records, files, websites, and possessions. To the extent that Applicant has not produced a document, that document either never existed, as detailed in Part I, or was not maintained in the regular course of business.

Opposer is well aware that Applicant is an individual hobbyist, not a sophisticated business or a highly organized, bureaucratized party that would be expected to keep and maintain rigorous records. To the extent that he possesses records, he has searched them exhaustively and repeatedly in response to Opposer's requests and has properly produced their contents.

Applicant has never skimmed on a search or a production in order to avoid compliance with Opposer's discovery requests. In fact, he has bent over backwards to comply with every one of Opposer's often unreasonable demands. He has been patient, accommodating, and cooperative throughout ten months of protracted litigation. He has consistently risen above Opposer's underhanded tactics and tried to keep this proceeding progressing towards a trial on the actual merits. He is hopeful that Opposer's motion to compel will be denied and that the suspension of this proceeding will be lifted so that the trial can begin.

III. APPLICANT HAS PROPERLY AND COMPLETELY RESPONDED TO ALL OF OPPOSER'S DISCOVERY REQUESTS

Applicant has fully complied with all of Opposer's discovery requests. Not only has he met his obligations, Applicant has exceeded his discovery duties by spending countless hours performing additional searches of his records, meeting and conferring with counsel to discuss meritless objections, and

preparing supplemental responses in order to resolve any possible ambiguity or dispute. Under oath, Applicant has attested to the fact that he has been fully and completely responsive to Opposer's requests and has acted in good faith. See, in particular, Applicant's Supplemental Discovery Responses at 1 and 16, in which Applicant states:

These supplemental responses shall under no circumstances be interpreted as an admission of Applicant's initial failure to respond. Applicant maintains that all responses, documents, and things that he has produced in this case have been complete, thorough, and in good faith. Nevertheless, Applicant is willing to supplement his responses in the spirit of compromise and to expedite the resolution of this case.

and

Applicant confirms after a complete and thorough search that he has produced all documents responsive to each request, with the exception of documents publicly and readily available from sources that are more convenient and less burdensome, such as Applicant's public website, his public Facebook page, or the USPTO database. Applicant further confirms that he is not withholding any documents responsive to any request, and that he has completed his document production for each request.

With specific regard to Interrogatories Nos. 16, 20, and 25, Applicant has repeatedly provided complete answers to these queries. To the extent that his original responses required clarification or supplementation, Applicant has already provided the requested information in his supplemental responses. See Exhibit A, attached.

Once again, Applicant is unsure what Opposer seeks to accomplish by its motion to compel, other than to suspend these proceedings and attempt to drain Applicant's resources.

IV. OPPOSER FILED ITS MOTION TO COMPEL IMPROPERLY

Motions to compel are reserved for extreme circumstances in which one party is unable to exact compliance from the other. This is not such a circumstance. This is a case in which

Applicant has been consistently cooperative and compliant. TBMP § 523 and 37 CFR § 2.120(e) require that a “motion to compel discovery must be supported by a written statement from the moving party that such party or its attorney has made a good faith effort, by conference or correspondence, to resolve with the other party or its attorney the issues presented in the motion, and has been unable to reach agreement.” To the extent that Opposer made such a statement, it either misrepresented (in the best case) or intentionally deceived (in the worst case) the Board.

A conference between the parties did occur on Friday, May 24, 2013. Applicant willingly participated in the conference, which took place from 9:00pm until midnight EST, at Opposer’s suggestion. Applicant cooperated in this process even though he had already provided full and complete good faith responses to Opposer and knew that Opposer’s objections lacked merit. The conference was courteous, and Applicant’s counsel comprehensively answered each of Opposer’s concerns. The call seemed to end amicably, with both parties in agreement that Applicant would provide certain specified supplemental responses.

On May 31, 2013, Applicant provided 15 pages of said supplemental responses to Opposer, corresponding precisely to the parties’ mutual understanding. Applicant agreed to and did provide these responses, not because they were necessary, but because he wanted to avoid even the misperception of noncompliance.

As a courtesy, Applicant even consented to Opposer’s request to extend the discovery period and delay the trial phase, so that Applicant could satisfy Opposer by performing still more searches of his records and confirming, once again, that no additional documents existed or were being withheld. When the extended discovery period finally ended and Applicant had more than complied with every one of Opposer’s requests, Applicant believed that the dispute had also come to an end.

Applicant's belief was supported by the fact that Opposer never contacted Applicant again, never objected to Applicant's supplemental responses in any way, and never notified Applicant that an ongoing dispute existed. Instead, Opposer behaved as if the dispute was resolved, then filed a motion to compel against Applicant without any notice or opportunity for discussion.

Notably, Opposer's motion to compel was not served on Applicant electronically, as stipulated to by the parties, and as every other document and motion has been served in this proceeding thus far. Instead, Opposer sent its motion to compel via first class snail mail, presumably to reduce the already brief 15-day time period for Applicant to respond to this surprise motion.

Opposer's motion to compel was improper in both content and form, and should be denied.

CONCLUSION

Opposer has acted in bad faith throughout this entire opposition proceeding. This motion to compel is the latest in a series of frivolous and meritless demands, objections, and delays proffered by Opponent in an effort to avoid arguing the substantive merits of this case and in an attempt to strong-arm Applicant out of the market. Opposer's motion to compel fits squarely within Opposer's pattern of misbehavior.

For these and all of the foregoing reasons, Opposer's Motion to Compel should be denied.

Dated: July 2, 2013

Respectfully Submitted,

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EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

MONSTER ENERGY COMPANY, Opposer))	
)	
v.)	
)	Opposition No: 91205924
)	Serial No.: 85/508374
CHIH, LI-WEI, Applicant.)	Mark: M
_____)	

APPLICANT’S SUPPLEMENTAL DISCOVERY RESPONSES

Pursuant to the Rules of Practice of the United States Trademark Trial and Appeal Board and the applicable Federal Rules of Civil Procedure, Applicant Li-Wei Chih hereby provides the requested supplemental discovery responses to Opposer Monster Energy Company, in writing and under oath.

These supplemental responses shall under no circumstances be interpreted as an admission of Applicant’s initial failure to respond. Applicant maintains that all responses, documents, and things that he has produced in this case have been complete, thorough, and in good faith. Nevertheless, Applicant is willing to supplement his responses in the spirit of compromise and to expedite the resolution of this case.

DEFINITIONS

1. The term “Applicant” as used herein denotes Li-Wei Chih.
2. The term “Opposer” as used herein denotes Monster Energy Company, its subsidiaries and divisions, its predecessors and successors, and officers, directors, employees, agents, and representatives thereof.
3. The term “Notice of Opposition” as used herein denotes Opposer’s Notice of Opposition, filed with the United States Patent and Trademark Office, in opposition of Applicant’s application for registration of the “M” Mark.

4. The term “Applicant’s Mark” as used herein denotes the “M” Mark, serial No. 85/508,374, as before the United States Patent and Trademark Office for registration.
5. The term “Monsterfish” or “monsterfish” as used herein denotes large, rare and exotic fish of all species.

SUPPLEMENTAL RESPONSES TO OPPOSER’S REQUESTS FOR ADMISSION
REQUEST FOR ADMISSION NO. 6

Admit that Applicant first used Applicant’s Mark on Applicant’s Goods in interstate commerce on May 15, 2005.

SUPPLEMENTAL RESPONSE TO NO. 6

Denied. Applicant first used Applicant’s Mark on Applicant’s Goods as defined in Opposer’s Resuests for Admission in 2009. Applicant first used Applicant’s Mark in interstate commerce in connection with his class 38 goods (specifically, online forums for the transmission of messages among computer users concerning fish) on March 30, 2005.

SUPPLEMENTAL RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1

Identify all persons with knowledge about how Applicant’s Mark was created, conceived, selected, cleared, adopted, or acquired and the substance of each person’s knowledge.

SUPPLEMENTAL RESPONSE TO NO. 1

Applicant has already identified himself, Li-Wei Chih, as a person with knowledge about how Applicant’s Mark was created, conceived, selected, cleared, adopted, or acquired.

The substance of his knowledge includes his own decision-making process, and how and why the mark was created and selected. Applicant further identifies the website

<http://www.logodesignguru.com>, which Applicant hired to create his first logo on

February 11, 2005. Applicant did not have contact or communication with any identifiable individual through this website. After Applicant became frustrated with the lack of designs offered by <http://www.logodesignguru.com>, Applicant began collaborating with Alex Yang of www.directpixel.com, who helped Applicant to create the M logo with devil horns and a forked devil tail as a way to depict the devilish nature of the monsterfish that are the subject of Applicant's website and online forum.

INTERROGATORY NO. 3

Describe in detail the circumstances surrounding Applicant's selection of Applicant's Mark, including describing why and how Applicant's Mark was selected and identifying the dates Applicant's Mark was selected.

SUPPLEMENTAL RESPONSE TO NO. 3

Applicant began keeping monsterfish, as defined in the Definitions section of these Responses, in 2001. Monsterfish keeping was, at that time, a popular and trendy hobby. In 2004, Applicant had the idea to start a blog to discuss monsterfish keeping. The blog evolved into an online community forum to connect fellow monsterfish hobbyists. In 2005, Applicant decided to formally brand his endeavor by adopting an official name and logo. His word mark was based on a Japanese pictorial book titled Monster Fish Keepers, published by Pisces. Applicant then engaged <http://www.logodesignguru.com> to design a logo to accompany his word mark. After Applicant became frustrated with the lack of designs offered by <http://www.logodesignguru.com>, Applicant began to personally brainstorm ideas. In thinking about the nature of his business, Applicant came up with the idea to add a pair of devil horns and a forked devil tail to the letter "M" for "Monsterfish." Applicant thought of this concept because of the "devilish" nature of the

monsterfish that are the subject of his website and online forum. Applicant collaborated with Alex Yang of www.directpixel.com, to draw the actual “M” that Applicant had conceived of. Once drawn, Applicant approved the mark because he considered it to be an appropriate reflection of the nature of his business. Applicant adopted the current mark on or around March 27, 2005.

INTERROGATORY NO. 4

Identify all alternative marks that were considered, but ultimately rejected, by Applicant prior to the adoption of Applicant’s Mark.

SUPPLEMENTAL RESPONSE TO NO. 4

Applicant confirms that the only other marks that were considered depicted skeletons of ferocious looking fish baring sharp teeth. Sketches of each of these alternative marks have already been produced to Opposer. Applicant ultimately rejected these marks in favor of his “M” mark.

INTERROGATORY NO. 5

Describe each search or investigation conducted by or on behalf of You in connection with Applicant’s Mark or any variation thereof, including, but not limited to, any search of the records of the United States Patent and Trademark Office or of any other records or publications.

SUPPLEMENTAL RESPONSE TO NO. 5

Applicant hired Litman Law, a law firm that advertised trademark search services on the Internet, to search the availability of his “Monsterfishkeepers” and “M” marks in the Fall of 2005. He chose Litman Law because they were the first to appear in his Internet search engine results and they were located close to Applicant’s home. Litman Law produced its

comprehensive search results in a packet given to Applicant on October 10, 2005. This packet has already been produced for Opposer. Applicant conducted no other searches or any party hired by Applicant, other than the usual search conducted by the USPTO examiner as part of the trademark registration process.

INTERROGATORY NO. 6

Describe the process by which You selected and adopted Applicant's Mark including, but not limited to, the steps You took to determine You could use and register the mark, the reasons for why You selected or adopted that mark, how the mark was first used in commerce including the goods and services, and the dates of first use for each good or service.

SUPPLEMENTAL RESPONSE TO NO. 6

As stated previously, Applicant based the idea for his word mark on a Japanese pictorial book titled Monster Fish Keepers, published by Pisces. Applicant then engaged <http://www.logodesignguru.com> to design a logo to accompany his word mark. After Applicant became frustrated with the lack of designs offered by <http://www.logodesignguru.com>, Applicant had the idea to draw an "M" for "Monsterfish," with a devil horn and forked devil tail incorporated into the letter design. Applicant thought of this concept because of the "devilish" nature of the monsterfish that are the subject of his website and online forum. The mark was first used in commerce in May 2005 on Applicant's online monster fish forum. Also as stated previously, Applicant hired Litman Law to conduct a comprehensive trademark search of both marks prior to applying for registration with the USPTO. As Opposer can see from the trademark search results previously produced, Litman Law did not identify any existing marks, including

any marks owned or used by Opposer, as causing potential consumer confusion with Applicant's marks. Based on Litman Law's opinion that Applicant could legally register his marks without infringing upon any existing marks or causing any consumer confusion in the marketplace, Applicant applied for his marks with the USPTO. As part of the usual registration process, the USPTO examining attorney conducted an independent search and also did not identify any likelihood of confusion with any existing marks. Both marks were published for opposition, during which time there were no objections from any third party, including Opposer. Based on these circumstances, Applicant believed that he could use and register his marks, which he successfully did in 2005. When, by 2009, his online forum had gained popularity, Applicant decided to start making t-shirts and other Class 25 goods to sell on his website and to offer for promotional purposes at fish conferences and expositions. Because he had already successfully registered both his word and design mark, which are now incontestable, he did not conduct additional searches before registering the same marks in an additional class. Applicant's Mark was first used in commerce in 2005 on his website. The first sale of a t-shirt depicting Applicant's Mark took place on January 9, 2009. After full consideration and thorough searches of his records, Applicant confirms that he does not remember and does not possess records documenting the first sale of his other Class 25 goods.

INTERROGATORY NO. 7

For each product listed in Applicant's Application, describe the circumstances surrounding the first sale of that product, including, but not limited to, the date when You first sold that product, the person or entity that you contend sold the product, the person

or entity that you contend purchased the product, the retail prices charged for the product, and the person(s) most knowledgeable about those sales.

SUPPLEMENTAL RESPONSE TO NO. 7

Applicant's first sale of a shirt depicting his mark was on or around January 9, 2009. The shirt was sold through Applicant's website for the retail price of \$15.00. Applicant does not remember nor have records documenting the person/entity who purchased that shirt. Applicant is the person most knowledgeable about the sale. After full consideration and thorough searches of his records, Applicant confirms that he does not remember and does not possess records documenting the first sale of his other Class 25 goods.

INTERROGATORY NO. 8

For any uses of the mark not identified in response to Interrogatory No.7, identify the dates of that use and describe that use including, but not limited to, describing the circumstances surrounding the first use of the marks in that manner by You, and identifying all documents evidencing the first use of the marks in that manner and all persons knowledgeable about that use.

SUPPLEMENTAL RESPONSE TO NO. 8

Applicant objects to this interrogatory on the grounds that it seeks information, documents or things that are not relevant to this Opposition. Any uses of Applicant's Mark that are covered by his incontestable Class 38 registration are not the appropriate subject of this proceeding. Without waiving this objection, Applicant responds that Applicant's Mark is used on his websites and online forums. The first use of the website and forum was in March 2005. Applicant has also used his Mark in fish magazines including Tropical Fish Magazine and Aquarium Fish International. The first use of the

Mark in a magazine was a half page advertisement in the March 2005 issue of Tropical Fish Magazine. Applicant also displays his mark on conference display boards and signs at various fish expositions and conferences. Applicant possesses photographs of some of the above uses, which he will produce to Opposer if he has not already done so.

Applicant is the person most knowledgeable about these uses. Presumably all readers of the magazines and of his website and all persons who viewed his conference displays are also knowledgeable, but those individuals are not identifiable by Applicant.

INTERROGATORY NO. 9

Describe each way Applicant's Mark is or will be used in connection with each good and/or service identified in response to Interrogatory Nos. 7 and 8, including but not limited to the size, placement, and coloring of the mark.

SUPPLEMENTAL RESPONSE TO NO. 9

Applicant's Mark is displayed on Applicant's Goods and on his websites, magazine ads, and conference displays in white and/or black ink on a red, pink, or black background.

The size of the mark varies widely depending on the nature of the use. The mark is usually used with, next to, or on the same product as the word "Monsterfishkeepers" and a fish.

INTERROGATORY NO. 10

Describe in detail the actual or intended demographics of the purchasers for the goods and/or services sold or offered in connection with Applicant's Mark.

SUPPLEMENTAL RESPONSE TO NO. 10

The actual and intended demographics of the purchasers for the goods and/or services sold or offered in connection with Applicant's Mark are monsterfish hobbyists and

enthusiasts. As defined in the Definitions section of these and previous Responses to Opposer, “monsterfish” are large, rare and exotic fish of all species. These fish are typically predatory. “Monsterfish hobbyists and enthusiasts” are keepers and admirers of large, rare, exotic, predatory fish. Applicant believes that monsterfish hobbyists and enthusiasts are typically about 40% 18-34 year olds and 23% 35-49 year olds. Applicant does not know the ages of the rest. Applicant does not know the gender statistics of monsterfish hobbyists and enthusiasts. Applicant is also unable to identify what percentage of his intended demographics reside in the United States versus international locations.

INTERROGATORY NO. 11

Describe in detail the trade channels, including, but not limited to, wholesale and retail channels, through which Applicant provides to consumers and/or plans to provide to consumers the goods and/or services sold or offered in connection with Applicant’s Mark.

SUPPLEMENTAL RESPONSE TO NO. 11

Applicant exclusively sells and distributes his goods and services through his website and at fish conferences and expositions, including the American Cichlid Association annual conference, the Catfish Convention, and the Stingray Symposium. Applicant does not, nor does he plan to, provide any goods or services through any other trade channels.

INTERROGATORY NO. 13

Identify all past or present customers (including, for example, retail, Internet, mail order, and/or wholesale) of the goods and/or services sold or offered in connection with Applicant’s Mark.

SUPPLEMENTAL RESPONSE TO NO. 13

See response to No. 11.

INTERROGATORY NO. 14

Separately for each good and/or service sold or offered in connection with Applicant's Mark, state the total sales (in units and dollars) on a monthly basis from the date of first sale to the present.

SUPPLEMENTAL RESPONSE TO NO. 14

Applicant restates his objection that this interrogatory contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Without waiving this objection, Applicant confirms that he has performed a thorough search and does not possess records and/or the ability to search and sort the records that would allow him to respond to this Interrogatory.

INTERROGATORY NO. 15

For each product or service sold or offered in connection with Applicant's Mark, state the average wholesale and retail price or intended average wholesale and retail price.

SUPPLEMENTAL RESPONSE TO NO. 15

Applicant restates his objection that this interrogatory contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Without waiving this objection, Applicant responds that the average retail price of t-shirts is \$15.00. The average retail price of hats is \$13.00. The average retail price of emblems and key chains is \$12.00. The average retail price of static aquarium tank stickers is \$3.00. Applicant does not calculate wholesale prices and does not have the ability to separate the average cost of shipping and tax from the above prices.

INTERROGATORY NO. 16

Describe in detail all manners in which the goods and/or services sold or offered in connection with Applicant's Mark have been advertised or promoted and/or plan to be advertised or promoted.

SUPPLEMENTAL RESPONSE TO NO. 16

Clarifying Applicant's previous response, Applicant does not advertise or promote his Class 25 goods. He only advertises and promotes his Class 38 services (specifically, his website and online community forum). These services are not the subject of this opposition proceeding. Applicant's Class 38 marks are incontestable. Applicant's Class 25 goods are made available on his Class 38 website under a tab labeled "Shop" but are not promoted or advertised.

INTERROGATORY NO. 18

Describe in detail the circumstances surrounding Applicant's awareness of Opposer's Marks, including how and when Applicant first became aware of Opposer's Marks.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 18

Applicant confirms that he first encountered Opposer's Marks, after Applicant's own marks were being used in commerce, in an advertisement at a rest stop. Applicant does not recall any additional specific details concerning the exact date or location.

INTERROGATORY NO. 19

Describe each search or investigation conducted by or on behalf of You in connection with, or concerning, Opposer's Marks or any variation thereof, including, but not limited to, any search of the records of the United States Patent and Trademark Office or of any other records or publications.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 19

Please see Applicant's comprehensive responses to Interrogatories No. 5 and 6. Applicant did not, nor has he ever had any reason to, conduct a specific search in connection with Opposer's Marks, as Opposer's Marks have never and would never cause a likelihood of confusion with Applicant's Mark. Opposer's Marks have never been identified by the USPTO, Litman Law which conducted Applicant's trademark search, or any consumer or third party as being confusingly similar to Applicant's Marks.

INTERROGATORY NO. 20

Describe any instances of an inquiry or comment regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks, including the Claw Icon mark, on the other hand, including identifying all persons having knowledge thereof and all documents relating thereto.

SUPPLEMENTAL RESPONSE TO NO. 20

The only comments regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks, including the Claw Icon mark, on the other hand, have been in specific response to this Opposition proceeding. All comments Applicant is aware of strongly refute, rather than support, any likelihood of confusion claim Opposer may assert. All comments are publicly available on Applicant's website and Facebook page and can easily be viewed by Opposer. Applicant has never received any private messages, letters, inquiries or e-mails regarding Opposer. Prior to this Opposition proceeding, Applicant never received, read, or heard of any inquiries or comments regarding any association between Applicant and Opposer or their respective marks, goods, or services.

INTERROGATORY NO. 21

Describe the factual bases supporting Applicant's allegation in paragraph 1 of Applicant's Affirmative Defenses that "Opposer has failed to state a claim upon which relief can be granted."

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 21

Because there is factually no likelihood of confusion between Applicant's and Opposer's Marks and no dilution of Opposer's Marks has occurred, Opposer has failed to state a claim upon which relief can be granted.

INTERROGATORY NO. 22

Describe the factual bases supporting Applicant's allegation in paragraph 2 of Applicant's Affirmative Defenses that "[t]here is no likelihood of confusion with Opposer's mark to bar registration of Applicant's mark under Lanham Act §2(d)."

SUPPLEMENTAL RESPONSE TO NO. 22

Applicant asserts that there is no likelihood of confusion with Opposer's Marks because the marks are substantially and obviously different. Opposer's Mark is explicitly described by Opposer as a "claw mark" or "claw icon." In its trademark application, Opposer describes its claw mark as having the following elements: "Claws; Feet, bird; Parts of birds: claws, talons, feet, foot tracks; Talons; Tracks, bird." Besides being a bird claw mark, Opposer's mark is also jagged, where Applicant's Mark is rounded and smooth. Further, Opposer's Mark is displayed most frequently in the colors black and/or neon green, as stated by Opposer, which differs from Applicant's Mark.

The elements of Applicant's Mark are clearly devil horns and a forked devil tail, which have nothing to do with and are not visually similar to Opposer's bird claw mark.

Furthermore, as stated above, Opposer's Marks have never been identified by the USPTO, Litman Law which conducted Applicant's trademark search, or any consumer or third party as being confusingly similar to Applicant's Marks.

INTERROGATORY NO. 23

Describe the factual bases supporting Applicant's allegation in paragraph 3 of Applicant's Affirmative Defenses that "[t]here is no dilution of Opposer's mark by Applicant's mark under Lanham Act §43(c)."

SUPPLEMENTARY RESPONSE TO INTERROGATORY NO. 23

Subject to and without waiving the objection that this interrogatory calls for attorney work product, Applicant responds that Opposer fails to meet the requirements for proving dilution under Lanham Act §43(c).

INTERROGATORY NO. 24

Describe in detail the circumstances surrounding Applicant's selection and use of the wording "UNLEASH YOUR INNER MONSTER", including the first use of that wording.

SUPPLEMENTAL RESPONSE TO NO. 24

Applicant objects to this Interrogatory to the extent that it seeks information, documents, or things that are not relevant to this Opposition. "UNLEASH YOUR INNER MONSTER" is neither the subject of a trademark application by Applicant nor the subject of this or any other Opposition proceeding. Without waiving this objection, Applicant supplements his response by stating that he is uncertain as to the exact date of first use of the wording but that it was prior to March 30, 2008. Applicant further

explains that in the context of his business, “Unleash your Inner Monster” means getting a bigger fish tank and more exotic fish.

INTERROGATORY NO. 25

Describe in detail the circumstances surrounding Applicant’s selection and use of the “M/UNLEASH YOUR INNER MONSTER” design , including the first use of that design.

SUPPLEMENTAL RESPONSE TO NO. 25

Applicant confirms that he created the patch shown in Interrogatory No. 25 sometime in February 2013 to give to his child’s jujitsu team for inspiration at children’s jujitsu competitions. Applicant has not, nor does he plan to ever, offer this design or patch for sale. He does not recall the exact date of first use.

INTERROGATORY NO. 28

Identify all documents referenced or relied upon in preparing Applicant’s responses to these Interrogatories.

SUPPLEMENTAL RESPONSE TO NO. 28

Applicant relied only on documents produced to Opposer in connection with this proceeding. Applicant is not withholding or refusing to produce any documents relating to Opposer or to this Opposition.

INTERROGATORY NO. 29

Describe in detail how and in what way any of Opposer’s Marks were considered or referenced during the selection, development, or design of Applicant’s Mark.

SUPPLEMENTAL RESPONSE TO NO. 29

Please see Applicant's comprehensive responses to Interrogatories No. 5, 6, and 19.

Applicant did not, nor has he ever had any reason to, consider or reference any of Opposer's Marks during the selection, development, or design of Applicant's Mark.

INTERROGATORY NO. 30

Identify all third party product names, service names, or marks of which you are aware that consist of a stylized letter "M."

SUPPLEMENTAL RESPONSE TO NO. 30

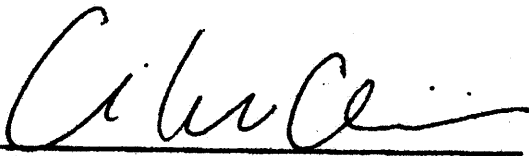
Applicant does not recall being aware of any third party product names, service names, or marks that consist of a stylized letter "M" outside of the context of this proceeding. As part of this proceeding, he has become aware of over 500 third party marks consisting of a stylized letter "M" in Class 25 alone by conducting a search on the USPTO website.


Applicant will not identify each of these 500+ marks as they are readily and more conveniently available to Opposer through a public and quick trademark search on <http://www.uspto.gov>.

**SUPPLEMENTAL RESPONSES TO REQUESTS FOR PRODUCTION OF
DOCUMENTS**

Applicant confirms after a complete and thorough search that he has produced all documents responsive to each request, with the exception of documents publicly and readily available from sources that are more convenient and less burdensome, such as Applicant's public website, his public Facebook page, or the USPTO database. Applicant further confirms that he is not withholding any documents responsive to any request, and that he has completed his document production for each request.

Dated: May 31, 2013

By: 
Li-Wei Chih
Applicant

By: 
Eve J. Brown
Attorney for Applicant
120 Tremont Street
Boston, MA 01208


CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2013, I caused a copy of Applicant's Response to Opposer's Motion to Compel to be served on Opposer in this matter by electronic mail to the counsel listed below:

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Dated: July 2, 2013

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